

(Enbridge comments rec'd LRB 9/11/07)

While the current proposal provides for certain notice requirements and other rights, it does not generally go as far as Enbridge's proposal in providing information to landowners.

In terms of notice, the current proposal requires only that an easement **contract** contain certain statements. In contrast, Enbridge's proposal would provide landowners with information **in advance** of even commencing negotiations of an easement contract.

Enbridge's proposal is not redundant of Wis. Stat. §§ 32.05(2)(a) or 32.06(2)(a). Those statutory provisions apply only to condemnation proceedings, and do not apply to voluntarily negotiated easement agreements.

In addition to the above, the current proposal includes some requirements that are likely to create confusion for both landowners and companies trying to comply with the proposal. One such requirement is that the easement contract include: "If true, the statement: 'No governmental agency has approved this sale or this contract of sale.'" This is potentially confusing because, while governmental agencies do not approve specific sales or specific contracts of sale, governmental agencies do approve various items related to pipelines, including pipeline routes, environmental permits, etc. The required statement is likely to create confusion on the part of landowners because it makes it appear that the pipeline companies have neither sought nor obtained any governmental approvals for the pipeline (which will not be the case). The "if true" portion of the requirement is also likely to create confusion on the part of pipeline companies trying to comply with the proposal because they will have, in fact, sought and received various governmental approvals for the pipeline.

Another requirement in the proposal that is likely to create confusion is the inclusion of: "A line for the date and the seller's signature immediately below the following statement: 'I have read and understand this notice.'" In particular, the confusing portion of this requirement is the reference to "this notice." That language will not follow any "notice," but rather is to be included

at the end of an easement agreement. As such, the statement should instead reference "this easement agreement" or simply "this agreement."

Finally, the proposal contains a provision that "[t]he court may enjoin the corporation . . . from entering onto the property covered by the easement pending the final decision of the court."

That language is likely to cause confusion among litigants and the courts regarding the standards to be applied when determining whether to enjoin a pipeline company. In addition, the length of time the action may be pending in court will also impose an undue hardship on the pipeline company.

A statutory provision permitting a court to enjoin a party, without reference to the statutory basis for an injunction, could lead a litigant or court to conclude that those statutory standards do not have to be met. At a minimum, the following language should be added to make clear that the statutory standards for an injunction have to be met: "Chapter 813 governs any temporary or interlocutory injunction or ex parte restraining order in an action under this section."

To the extent an injunction may be issued, imposing some reasonable time limit on the court to make a decision on the merits of the case is necessary to prevent an undue hardship on the pipeline company. Given the relatively limited statutory bases on which an easement agreement may be declared void, it would seem reasonable to impose a deadline on the court of not more than 30 days from the date the summons and complaint are filed.

Enbridge
COMMENTS TO LRB-2861/2

While LRB-2861/2 provides for certain notice requirements and other rights, it does not generally go as far as Enbridge's proposal in providing information to landowners.

In terms of notice, LRB-2861/2 requires only that an easement **contract** contain certain statements. In contrast, Enbridge's proposal would provide landowners with information **in advance** of even commencing negotiations of an easement contract.

Enbridge's proposal is not redundant of Wis. Stat. §§ 32.05(2)(a) or 32.06(2)(a). Those statutory provisions apply only to condemnation proceedings, and do not apply to voluntarily negotiated easement agreements that are the subject of LRB-2861/2. In that regard, the application of LRB-2861/2 to "a corporation described in s. 32.02(13)" is confusing.

Wis. Stat. §32.02 gives those various entities described in the statute (both governmental and private) the right to condemn property "in case such property cannot be acquired by gift or purchase at an agreed price." The definition from Wis. Stat. §32.02(13) further includes the requirement that the PSC finds the real estate interests sought to be acquired are in the public interest, something that only has to occur when property is acquired by condemnation, as opposed to voluntarily negotiated easement agreements that are the subject of LRB-2861/2.

Confusion can be avoided by using most of the language in Wis. Stat. 32.02(13) to define corporations subject to the bill, but stopping the definition before the phrase "subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest."

LRB-2861/2 also includes some additional requirements that are likely to create confusion for both landowners and companies trying to comply with LRB-2861/2. One such requirement is that the easement contract include: "If true, the statement: 'No governmental agency has approved this sale or this contract of sale.'" This is potentially confusing because, while governmental agencies do not approve specific sales or specific contracts of sale,

governmental agencies do approve various items related to pipelines, including pipeline routes, environmental permits, etc. The required statement is likely to create confusion on the part of landowners because it makes it appear that the pipeline companies have neither sought nor obtained any governmental approvals for the pipeline (which will not be the case). The "if true" portion of the requirement is also likely to create confusion on the part of pipeline companies trying to comply with LRB-2861/2 because they will have, in fact, sought and received various governmental approvals for the pipeline.

Another requirement in LRB-2861/2 that is likely to create confusion is the inclusion of: "A line for the date and the seller's signature immediately below the following statement: 'I have read and understand this notice.'" In particular, the confusing portion of this requirement is the reference to "this notice." That language will not follow any "notice," but rather is to be included at the end of an easement agreement. As such, the statement should instead reference "this easement agreement" or simply "this agreement."

Enbridge
COMMENTS TO LRB-2861/3

While LRB-2861/3 generally broadens the requirements from LRB-2861/2 to provide information to landowners, consistent with Enbridge's proposal, the continued references in LRB-2861/3 to provisions of Wis. Stat. Chapter 32 are confusing.

Wis. Stat. §32.02 gives those various entities described in the statute (both governmental and private) the right to condemn property "in case such property cannot be acquired by gift or purchase at an agreed price." As such, Wis. Stat. Chapter 32 applies only to condemnation proceedings, and does not apply to voluntarily negotiated easement agreements that are the subject of LRB-2861/3. X

As a result, the references in 2861/3 to "a corporation described in s. 32.02(13)" and to "the obligation of the corporation to negotiate with the landowner for the purchase of the easement under s. 32.06(2a)" are confusing.

Confusion regarding the definition of corporations subject to the bill in 700.30(1) and 700.30(2) can be avoided by using most of the language in Wis. Stat. 32.02(13) to define corporations subject to the bill, but stopping the definition before the phrase "subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest," and by otherwise removing the references to Wis. Stat. 32.02(13).

Confusion regarding the applicability of Wis. Stat. 32.06(2a) can be avoided by deleting the proposed 700.30(1)(b) in its entirety, and replacing it with "The intention of the corporation to make a good faith effort to negotiate with the landowner to acquire the easement."

LRB-2861/3 also includes some additional requirements that are likely to create confusion for both landowners and companies trying to comply with LRB-2861/3. One such

requirement is found in 700.30(1)(c) that the initial notice include: "The advisability for the landowner to consult an attorney." This is potentially confusing because the proposed requirement for the contract in 700.30(2)(b) is somewhat different - - a company is required to include the statement: "You may wish to consult an attorney before entering into this contract." In order to avoid confusion, the two requirements should be consistently stated. For example, 700.30(1)(c) could state: "That the landowner may wish to consult an attorney."

Another requirement in LRB-2861/3 that is likely to create confusion is the requirement in 700.30(2)(d) of: "A line for the date and the seller's signature immediately below the following statement: 'I have read and understand this notice.'" In particular, the confusing portion of this requirement is the reference to "this notice." That language will not follow any "notice," but rather is to be included at the end of an easement agreement. As such, the statement should instead reference "this easement agreement" or simply "this agreement."

9/11/07 mtg in Sen. Lassa's office with:

- Lassa's aide: Danielle Wilson
- Mark Patronsky - Leg Council
- Lobbyist for Enbridge - Dan
- Enbridge atty Beth Pison Claude

re Enbridge draft - (D's shown in red)
(attached)

- OK to define corp here ^(700.30) instead of by x-ref
- "good faith effort" OK

but I argued to leave in "obligation"
because of 32.06 - OK w/ Enbridge, but
delete x-ref to 32.06 (2a) - OK

- delete "advisability" - OK
- use "agreement" instead of "notice" - OK

Enbridge Draft

SECTION 1. 700.30 of the statutes is created to read:

700.30 Purchase of easement by pipeline corporation. (1) NOTICE OF INTENT TO ACQUIRE AN EASEMENT. Before a corporation ~~described in s. 32.02 (13)~~ licensed to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce begins negotiating with a landowner to acquire an easement, the corporation shall serve upon or mail by certified mail to the landowner a notice containing the following information:

(a) The corporation's intent to acquire the easement.

(b) ~~The obligation of the~~ That the corporation shall make a good faith effort to negotiate with the landowner for the purchase of the easement ~~under s. 32.06 (2a)~~.

(c) ~~The advisability for the landowner~~ That the landowner may wish to consult an attorney.

(2) REQUIREMENTS FOR CONTRACT OF SALE. Whenever a corporation ~~described in s. 32.02 (13)~~ licensed to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce purchases an easement as a result of negotiation, the contract of sale shall include all of the following:

(a) If true, the statement: "This pipeline project may require the approval of one or more governmental agencies, but no governmental agency has approved this contract of sale."

1 (b) The statement: "You may wish to consult an attorney before entering into this
2 contract."

3 (c) The statement "Section 700.30 (3) of the Wisconsin statutes provides that
4 under certain circumstances you may bring an action in circuit court within 60 days after
5 entering into this contract to have this contract declared void."

6 (d) A line for the date and seller's signature immediately below the following
7 statement: "I have read and understand this agreementnotice."

8 **(3) ACTION FOR VIOLATION OF REQUIREMENTS.** If the seller of an
9 easement under sub. (2) believes that the corporation violated sub. (1) or that the contract
10 of sale violates sub. (2), he or she may bring an action in circuit court within 60 days
11 after the contract is executed to have the contract declared void. If the court determines
12 that the corporation violated sub. (1) or that the contract of sale violates sub. (2), the
13 court shall declare the contract void.

14 **SECTION 2. Initial applicability.**

15 (1) This act first applies to a contract of sale for the purchase of an easement that
16 is entered into on the effective date of this subsection.

17 **(END)**

2007 BILL

- 1 **AN ACT** *Regen* **to create** 700.30 of the statutes; **relating to:** the acquisition of an
2 easement by a pipeline corporation. *in good faith* *may wish*

Analysis by the Legislative Reference Bureau

must This bill requires a pipeline corporation that intends to acquire an easement to notify the landowner before it begins negotiations with the landowner. The notice must state that the corporation intends to acquire the easement, that the corporation ~~has a legal obligation to~~ negotiate with the landowner for the purchase of the easement, and that ~~it may be advisable for~~ the landowner to consult an attorney.

agreement The bill requires a pipeline corporation that purchases an easement to include in the contract of sale a statement that the pipeline project may require the approval of one or more governmental agencies, but that no governmental agency has approved the contract of sale, if that is the case; a statement that the landowner may bring an action in circuit court to have the contract of sale declared void under certain circumstances; and a statement that the landowner may wish to consult with an attorney before entering into the contract. The contract of sale must also contain a statement to be signed by the landowner that he or she has read and understands the notice provided in the contract. The bill provides that, if a person who sells an easement to a pipeline corporation believes that the contract of sale violates the requirements in the bill, the seller may, within 60 days after executing the contract, bring an action to have the contract declared void.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

INS. 2-2

SECTION 1. 700.30 of the statutes is created to read:

700.30 Purchase of easement by pipeline corporation. (1) NOTICE OF INTENT TO ACQUIRE AN EASEMENT. Before a corporation described in s. 32.02 (13) begins negotiating with a landowner to acquire an easement, the corporation shall serve upon or mail by certified mail to the landowner a notice containing the following information:

- (a) The corporation ^{intends} ~~intends~~ to acquire the easement.
- (b) The ~~obligation of the~~ corporation to negotiate with the landowner for the purchase of the easement ~~under s. 32.06 (2a)~~.
- (c) The ~~advisability for the~~ landowner ^{may wish} to consult an attorney.

~~3~~ (2) REQUIREMENTS FOR CONTRACT OF SALE. Whenever a corporation described in s. 32.02 (13) purchases an easement as a result of negotiation, the contract of sale shall include all of the following:

(a) If true, the statement: "This pipeline project may require the approval of one or more governmental agencies, but no governmental agency has approved this contract of sale."

(b) The statement: "You may wish to consult an attorney before entering into this contract."

(c) The statement "Section 700.30 (3) of the Wisconsin statutes provides that under certain circumstances you may bring an action in circuit court within 60 days after entering into this contract to have this contract declared void."

(d) A line for the date and the seller's signature immediately below the following statement: "I have read and understand this ^{agreement} ~~notice~~."

(3) ACTION FOR VIOLATION OF REQUIREMENTS. If the seller of an easement under sub. (2) believes that the corporation violated sub. (1) or that the contract of sale

BILL

1 violates sub. (2)³, he or she may bring an action in circuit court within 60 days after
2 the contract is executed to have the contract declared void. If the court determines
3 that the corporation violated sub. (1)² or that the contract of sale violates sub. (2)³, the
4 court shall declare the contract void.

SECTION 2. Initial applicability.

6 (1) This act first applies to a contract of sale for the purchase of an easement
7 that is entered into on the effective date of this subsection.

8 (END)

2-2

(NO #) ^{CS} DEFINITION: In this section, "corporation" ^{corporation}
 means a corporation licensed to do business ^{do}
 in this state that transmits ^{in pipelines in this state} oil or related
 products, including all hydrocarbons ^{that} which ^{form}
 are in a liquid form at the temperature and
 pressure under which they are transported, ~~the~~
~~pipelines in this state~~ maintain ^{delivery}
 terminal or product delivery facilities in this ^{this}
 state; ^{engaged} and is engaged in interstate or
 international commerce.

(H) (2) ^(B) NO #

(end ins 2-2)

Grant, Peter

From: Wilson, Danielle
Sent: Thursday, September 27, 2007 1:02 PM
To: Patronskey, Mark; Grant, Peter
Subject: FW: Bill
Attachments: Redline of Proposed Changes to LRB 2861-4.doc

Hi Mark and Peter,

We had a meeting with Dan Gunderson today about some changes they would like to have made to the bill. Apparently there is a lawsuit going on between a landowner and Enbridge over the use of the word "corporation" in the original contract from the 1950s. Enbridge, like many other pipeline companies, is now considered a "master limited partnership." They would like to use this bill to redefine corporations to include all of the various entities. I have attached their proposed language and would greatly appreciate any insight or suggestions you may have on the impacts of these changes.

Thank you!

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Dan Gunderson [<mailto:dangunderson@tds.net>]
Sent: Thursday, September 27, 2007 11:47 AM
To: Wilson, Danielle
Subject: Bill

09/27/2007

2007 BILL

1 AN ACT *to create* 700.30 *and to amend* 32.02(intro.) and 32.02(13) of the statutes;

2 **relating to:** the acquisition of an easement by a pipeline business entity and

3 condemnation by a pipeline business entity.

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Analysis by the Legislative Reference Bureau

This bill requires a pipeline business entity that intends to acquire an easement to notify the landowner before it begins negotiations with the landowner. The notice must state that the business entity intends to acquire the easement, that the business entity must negotiate in good faith with the landowner for the purchase of the easement, and that the landowner may wish to consult an attorney.

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The bill requires a pipeline business entity that purchases an easement to include in the contract of sale a statement that the pipeline project may require the approval of one or more governmental agencies, but that no governmental agency has approved the contract of sale, if that is the case; a statement that the landowner may bring an action in circuit court to have the contract of sale declared void under certain circumstances; and a statement that the landowner may wish to consult with an attorney before entering into the contract. The contract of sale must also contain a statement to be signed by the landowner that he or she has read and understands the agreement. The bill provides that, if a person who sells an easement to a pipeline business entity believes that the contract of sale violates the requirements in the bill, the seller may, within 60 days after executing the contract, bring an action to have the contract declared void.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 700.30 of the statutes is created to read:

2 **700.30 Purchase of easement by pipeline business entity.** (1) DEFINITION.

3 In this section, "pipeline business entity" means a corporation, limited partnership,
4 limited liability company, partnership, joint venture, association or other business entity
5 licensed to do business in this state that transmits in pipelines in this state oil or related
6 products, including all hydrocarbons that are in a liquid form at the temperature and
7 pressure under which they are transported; maintains terminal or product delivery
8 facilities in this state; and is engaged in interstate or international commerce.

9 (2) NOTICE OF INTENT TO ACQUIRE AN EASEMENT. Before a pipeline business
10 entity begins negotiating with a landowner to acquire an easement, the pipeline business
11 entity shall serve upon or mail by certified mail to the landowner a notice containing the
12 following information:

13 (a) The pipeline business entity intends to acquire the easement.

14 (b) The pipeline business entity is obligated to make a good faith effort to
15 negotiate with the landowner for the purchase of the easement.

16 (c) The landowner may wish to consult an attorney.

17 (3) REQUIREMENTS FOR CONTRACT OF SALE. Whenever a pipeline business entity
18 purchases an easement as a result of negotiation, the contract of sale shall include all of
19 the following:

20 (a) If true, the statement: "This pipeline project may require the approval of one
21 or more governmental agencies, but no governmental agency has approved this contract
22 of sale."

23 (b) The statement: "You may wish to consult an attorney before entering into this

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1 contract.”

2 (c) The statement: “Section 700.30 (3) of the Wisconsin statutes provides that
3 under certain circumstances you may bring an action in circuit court within 60 days after
4 entering into this contract to have this contract declared void.”

5 (d) A line for the date and seller=s signature immediately below the following
6 statement: “I have read and understand this agreement.”

7 (4) ACTION FOR VIOLATION OF REQUIREMENTS. If the seller of an easement under
8 sub. (3) believes that the pipeline business entity violated sub. (2) or that the contract of
9 sale violates sub. (3), he or she may bring an action in circuit court within 60 days after
10 the contract is executed to have the contract declared void. If the court determines that
11 the pipeline business entity violated sub. (2) or that the contract of sale violates sub. (3),
12 the court shall declare the contract void.

13 **SECTION 2. 32.02(intro.) and 32.02(13) of the statutes are amended to**
14 **read:**

15 **32.02 Who may condemn; purposes.** The following departments,
16 municipalities, boards, commissions, public officers and corporations~~business entities~~
17 may acquire by condemnation any real estate and personal property appurtenant thereto
18 or interest therein which they have power to acquire and hold or transfer to the state, for
19 the purposes specified, in case such property cannot be acquired by gift or purchase at an
20 agreed price:

21 **32.02(13)** Any corporation, limited partnership, limited liability company,
22 partnership, joint venture, association or other business entity licensed to do business in
23 Wisconsin that shall transmit oil or related products including all hydrocarbons which are

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1 | in a liquid form at the temperature and pressure under which they are transported in
2 | pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in
3 | Wisconsin, and shall be engaged in interstate or international commerce, subject to the
4 | approval of the public service commission upon a finding by it that the proposed real
5 | estate interests sought to be acquired are in the public interest.

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6 | **SECTION 3. Initial applicability.**

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7 | (1) Section 1 of this act creating section 700.30 first applies to a contract of sale
8 | for the purchase of an easement that is entered into on the effective date of this
9 | subsection.

10 | (2) Section 2 of this act amending sections 32.02 (intro.) and 32.02(13) applies to
11 | applications for condemnation authority filed after the effective date of this subsection
12 | and retroactively to any applications for condemnation authority pending or approved
13 | prior to the effective date.

Deleted: pending or approved

Deleted: .

14 | (END)

15 |

16 |

Grant, Peter

From: Wilson, Danielle
Sent: Monday, October 01, 2007 8:50 AM
To: Grant, Peter; Patronskey, Mark
Subject: FW: Senator Lassa would like your input

Hi Mark and Peter,

I hope you two had a good weekend. I just read this email from the PSC about the most recent draft, which is a little disappointing to receive considering they were originally okay with the bill. I have sent Lori a message back asking whether the PSC will be supportive if we change the language to accommodate the issues they address or if they have additional concerns, but she is apparently out until Thursday. Do you have any thoughts or suggestions about the issues they have with the language? (I realize that I will alter my description of Enbridge so that it only describes the company's Wisconsin activities.)

Thanks!

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Sakk, Lori - PSC
Sent: Friday, September 28, 2007 4:22 PM
To: Wilson, Danielle
Subject: FW: Senator Lassa would like your input

Danielle –

Just wanted to send this to you FYI. While we are taking NO position on this bill, the following input from our deputy general counsel may be helpful. Please let me know if you have any questions.

Lori

Lori, we should point out to Senator Lassa's office that words used in certain portions of the bill may be unintentionally misleading.

In LRB 2861/4, the bill relating clause, analysis, and proposed section title all say "pipeline corporation." This is not accurate because it is too broad. The bill only applies to a pipeline "corporation" as defined in proposed Wis. Stat. s. 700.30(1). It reads (emphasis added):

(1) DEFINITION. In this section, "corporation" means a **corporation licensed to do business in this state**

that transmits in pipelines in this state oil or related products, including all hydrocarbons that are in a liquid form at the temperature and pressure under which they are transported; maintains terminal or product delivery facilities in this state; and is engaged in interstate or international commerce.

The new definition is based on the language in current Wis. Stat. s. 32.02(13). That subsection reads (emphasis added):

32.02(13) **Any corporation licensed to do business in Wisconsin that shall transmit oil or related products** including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported **in pipelines in Wisconsin**, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.

Consequently, the bill would be more accurate if references to "pipeline corporation" were revised to say something like "oil pipeline corporation" or "petroleum pipeline corporation." As presently drafted, the phrase "pipeline corporation" implies the bill also applies to a *natural gas* pipeline corporation, which it does not.

I want to emphasize that the actual statutory language used in the bill appears to be fine. The requirements the bill imposes would apply to Enbridge if the bill is enacted.

On a much smaller note, the e-mail describes Enbridge as "a crude oil and natural gas pipeline company." This is correct. However, in Wisconsin Enbridge is only a crude oil pipeline company. Although Enbridge owns the Alliance natural gas pipeline, that pipeline is not located in Wisconsin.

I hope this helps. Let me know if I can be of further assistance.

From: Wilson, Danielle [mailto:Danielle.Wilson@legis.wisconsin.gov]

Sent: Monday, July 09, 2007 9:43 AM

To: Sakk, Lori PSC; Moll, Keeley A - DATCP; Rabin, Alan

Subject: Senator Lassa would like your input

Senator Lassa has drafted LRB 2861 on behalf of a number of constituents in her district who feel that they were misinformed when they signed a right of way easement contract with Enbridge Inc., which is a crude oil and natural gas pipeline company. Some people thought that a governmental agency was involved in the pipeline approval and the right of way contract, and others felt that they were pressured to sign right away, without first consulting an attorney.

This bill requires pipeline companies to include language in all easement contracts that specifies that no governmental agency has approved or disapproved of the contract and that the sellers are advised to consult with an attorney before signing the document. Should the company fail to include this language in the contract, the sellers have a 60-day window of opportunity from the date they sign to request that the court void the contract.

I was hoping that you could look over the bill to see if your department has any concerns or suggestions. I would greatly appreciate any insight you may offer. If you have any further questions, please contact me.

10/01/2007

Thank for your assistance.

Sincerely,

Danielle Wilson

Office of Senator Julie Lassa

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P.O. Box 7882
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<< File: 07-28611.pdf >>

9/27/06

TC w/ Danielle in Lassa's office

discusses problems w/ Enbridge land -
if they're a diff. entity
now how will the negotiat (2)
help them?

she'll get back to me w/ more info.

Grant, Peter

From: Grant, Peter
Sent: Thursday, October 11, 2007 1:56 PM
To: Wilson, Danielle; Patronsky, Mark
Subject: New language

Danielle, I modified my suggested language just a bit. I think it's better because it's a little more specific. You might pass it along to Beth. I've indicated the changes.

Notwithstanding s. 32.02 (13), 2005 stats, any condemnation proceeding undertaken by a business entity under that section before the effective date of this section [revisor of statutes inserts date] ~~by a business entity other than a corporation~~ for the transmission of oil or related products in a pipeline is not invalid solely because the business entity was not organized as a corporation.

My only lingering doubt is whether "proceeding undertaken...before [date]" is clear enough. Does it include condemnations commenced but not completed? What event indicates "commencement"? Should the language instead say "for which a jurisdictional offer was made before [date]"? I'm open to suggestions.

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wisconsin.gov

TC w/ Beth Claude 10/16/07
+ Dan Grunidge

PSC litigation

atty represents landowner

RE existing easement

argument: "no longer valid bec. no longer a P.L. corp

q: didn't the master Hld. partnership acquire
the easement from the corp? } unclear?

→ restructuring does not invalidate easements

I'll produce a k for review.

Inserts

FR 1.
9 am.

stays

2007 BILL

SA ✓
X-ref ✓

1 AN ACT to create 700.30 of the statutes; relating to: the acquisition of an
2 easement by a pipeline corporation.

Analysis by the Legislative Reference Bureau

* This bill requires a pipeline corporation that intends to acquire an easement to notify the landowner before it begins negotiations with the landowner. The notice must state that the corporation intends to acquire the easement, that the corporation must negotiate in good faith with the landowner for the purchase of the easement, and that the landowner may wish to consult an attorney.

* The bill requires a pipeline corporation that purchases an easement to include in the contract of sale a statement that the pipeline project may require the approval of one or more governmental agencies, but that no governmental agency has approved the contract of sale, if that is the case; a statement that the landowner may bring an action in circuit court to have the contract of sale declared void under certain circumstances; and a statement that the landowner may wish to consult with an attorney before entering into the contract. The contract of sale must also contain a statement to be signed by the landowner that he or she has read and understands the agreement. The bill provides that, if a person who sells an easement to a pipeline corporation believes that the contract of sale violates the requirements in the bill, the seller may, within 60 days after executing the contract, bring an action to have the contract declared void.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert

1-3

BILL

SECTION 1

SECTION 1. 700.30 of the statutes is created to read:

700.30 Purchase of easement by pipeline corporation. (1) DEFINITION.

In this section, "corporation" means a corporation licensed to do business in this state that transmits in pipelines in this state oil or related products, including all hydrocarbons that are in a liquid form at the temperature and pressure under which they are transported; maintains terminal or product delivery facilities in this state; and is engaged in interstate or international commerce.

(2) NOTICE OF INTENT TO ACQUIRE AN EASEMENT. Before a corporation begins negotiating with a landowner to acquire an easement, the corporation shall serve upon or mail by certified mail to the landowner a notice containing the following information:

- (a) The corporation intends to acquire the easement.
- (b) The corporation is obligated to make a good faith effort to negotiate with the landowner for the purchase of the easement.
- (c) The landowner may wish to consult an attorney.

(3) REQUIREMENTS FOR CONTRACT OF SALE. Whenever a corporation purchases an easement as a result of negotiation, the contract of sale shall include all of the following:

- (a) If true, the statement: "This pipeline project may require the approval of one or more governmental agencies, but no governmental agency has approved this contract of sale."
- (b) The statement: "You may wish to consult an attorney before entering into this contract."

BILL

1 (c) The statement: "Section 700.30 (3) of the Wisconsin statutes provides that
2 under certain circumstances you may bring an action in circuit court within 60 days
3 after entering into this contract to have this contract declared void."

4 (d) A line for the date and the seller's signature immediately below the
5 following statement: "I have read and understand this agreement."

6 (4) ACTION FOR VIOLATION OF REQUIREMENTS. If the seller of an easement under
7 sub. (3) believes that the ~~corporation~~ violated sub. (2) or that the contract of sale
8 violates sub. (3), he or she may bring an action in circuit court within 60 days after
9 the contract is executed to have the contract declared void. If the court determines
10 that the ~~corporation~~ violated sub. (2) or that the contract of sale violates sub. (3), the
11 court shall declare the contract void.

12 **SECTION 2. Initial applicability.**

13 (1) ~~This act~~ first applies to a contract of sale for the purchase of an easement
14 that is entered into on the effective date of this subsection.

15 (END) ✓

pipeline business entity

Insert

3-11

The creation of section 700.30 of the statutes

1A

oil

¶ Current law authorizes an pipeline corporation to acquire property by condemnation. ¶ This bill provides that the entity operating the pipeline need not be organized as a corporation; it may be organized as a partnership, limited liability company, joint venture, or any other business entity. ¶ The bill also provides that the acquisition of property by an oil pipeline corporation is not invalidated solely because the corporation restructured as a different business entity.

end 1A insert

1-3:1

X

Section #. 13.48 (12) (b) 1. of the statutes is amended to read:

or a business entity having
condemnation authority
under s. 32.02

a corporation

13.48 (12) (b) 1. A facility constructed by or for corporations having condemnation authority under s. 32.02 (3) to (10) ~~and~~ (13) for purposes for which the corporation would have condemnation authority.

or business entity

History: 1971 c. 125; 1973 c. 90; 1973 c. 243 s. 82; 1973 c. 335 s. 13; 1975 c. 39, 40, 198, 199; 1977 c. 26; 1977 c. 29 ss. 7, 8r, 1654 (8) (c); 1977 c. 325; 1977 c. 418 ss. 5, 5m, 924 (18) (c); 1979 c. 34, 221, 350; 1981 c. 341; 1983 a. 27 ss. 11 to 12n, 2202 (5); 1983 a. 36 ss. 18 to 20, 96 (3); 1983 a. 207; 1985 a. 29, 120; 1987 a. 27, 186, 395, 399; 1989 a. 31, 366; 1991 a. 39, 269, 315; 1993 a. 16, 288, 414; 1995 a. 27, 216, 225, 227; 1997 a. 5, 27, 35, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 16, 103; 2003 a. 33 ss. 25 to 26i, 9160; 2003 a. 91; 2005 a. 25, 253, 391.

1-3
continued

1-3:2

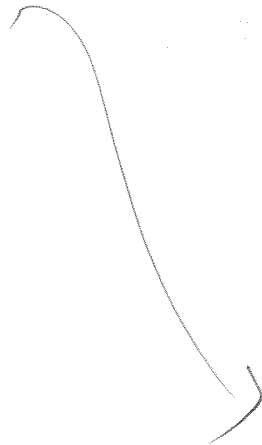
Section #. 32.02 (intro.) of the statutes is amended to read:

business entities

✓ **32.02 Who may condemn; purposes.** (intro.) The following departments, municipalities, boards, commissions, public officers, and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335.

insert 1-3 continued



↓ X
1-3:3
Section #. 32.02 (13) of the statutes is amended to read: ✓

business entity as defined in s. 13.62(5),

✓ 32.02 (13) Any corporation licensed to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335.

end of 1-3 insert

1-3 continued

1-3:4

X

Section #. 66.1035 of the statutes is amended to read:

66.1035 Rights of abutting owners. The owners of land abutting on any highway, street, or alley shall have a common right in the free and unobstructed use of the full width of the highway, street, or alley. No town, village, city, county, company, or corporation shall close up, use, or obstruct any part of the highway, street, or alley so as to materially interfere with its usefulness as a highway or so as to damage abutting property, or permit the same to be done, without just compensation being made for any resulting damage. This section does not impose liability for damages arising from the use, maintenance, and operation of tracks or other public improvement legally laid down, built, or established in any street, highway, or alley prior to April 7, 1889. All rights in property that could entitle an owner to damages under this section may be condemned by any corporation that is listed in s. 32.02 in the same manner that other property may be condemned by the corporation.

History: 2003 a. 214 s. 101; Stats. 2003 s. 66.1035.

or business entity

end of insert 1-3

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2-3

¶ (a) [✓] Business entity [✓] has the meaning
given in s. 13.62(5) [✓] ①

¶ (b) [✓] Pipeline business entity [✓]

end of insert 2-3

3-11

X

§ SEC. CR. 992.11

§ 992.11 Validation of acquisition of
by an oil pipeline corporation

The acquisition of property by an

oil pipeline

corporation

under

s. 32.02 (13)

before the

effective date of this section. [rev date]

revisor inserts

not invalid solely because the corporation has
restructured as a different type of business

entity

end of insert 3-11

Grant, Peter

From: Wilson, Danielle
Sent: Thursday, February 14, 2008 2:37 PM
To: Grant, Peter
Subject: Pipeline easement bill...finally

Attachments: 07-3435P1.pdf



07-3435P1.pdf (23 KB)

Happy Valentine's Day, Peter!

Could I please have 3435P1 be drafted as LRB 2861/6?

Thank you very much!

Danielle Wilson
Clerk, Senate Committee on Economic Development
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

2007 - 2008 LEGISLATURE

Monday
LRB-3435/P1
PG:bjk:rs
LRB-2861/6

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PG:bjk

2007 Bill

SAV

regen. cat.

- 1 AN ACT *to amend* 13.48 (12) (b) 1., 32.02 (intro.), 32.02 (13) and 66.1035; and *to*
- 2 *create* 700.30 of the statutes; **relating to:** the acquisition of an easement by
- 3 an oil pipeline business entity.

Analysis by the Legislative Reference Bureau

Current law authorizes an oil pipeline corporation to acquire property by condemnation. Retroactive to June 1, 2007, this bill provides that the entity operating the pipeline need not be organized as a corporation; it may be organized as a partnership, limited liability company, joint venture, or any other business entity.

The bill requires an oil pipeline business entity that intends to acquire an easement to notify the landowner before it begins negotiating with the landowner. The notice must state that the business entity intends to acquire the easement, that the business entity must negotiate in good faith with the landowner for the purchase of the easement, and that the landowner may wish to consult an attorney.

The bill requires an oil pipeline business entity that purchases an easement to include in the contract of sale a statement that the pipeline project may require the approval of one or more governmental agencies, but that no governmental agency has approved the contract of sale, if that is the case; a statement that the landowner may bring an action in circuit court to have the contract of sale declared void under certain circumstances; and a statement that the landowner may wish to consult with an attorney before entering into the contract. The contract of sale must also contain a statement to be signed by the landowner that he or she has read and understands the agreement. The bill provides that, if a person who sells an easement to a pipeline

business entity believes that the contract of sale violates the requirements in the bill, the seller may, within 60 days after executing the contract, bring an action to have the contract declared void.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 13.48 (12) (b) 1. of the statutes is amended to read:

2 13.48 **(12)** (b) 1. A facility constructed by or for ~~corporations~~ a corporation
3 having condemnation authority under s. 32.02 (3) to (10) ~~and or a business entity~~
4 having condemnation authority under s. 32.02 (13) for purposes for which the
5 corporation ~~or business entity~~ would have condemnation authority.

6 ✓
7 **SECTION 2.** 32.02 (intro.) of the statutes is amended to read:

8 **32.02 Who may condemn; purposes.** (intro.) The following departments,
9 municipalities, boards, commissions, public officers, ~~and corporations~~ business
10 entities may acquire by condemnation any real estate and personal property
11 appurtenant thereto or interest therein which they have power to acquire and hold
12 or transfer to the state, for the purposes specified, in case such property cannot be
13 acquired by gift or purchase at an agreed price:

14 ✓
15 **SECTION 3.** 32.02 (13) of the statutes is amended to read:

16 32.02 **(13)** Any ~~corporation~~ business entity, as defined in s. 13.62 (5), licensed
17 to do business in Wisconsin that shall transmit oil or related products including all
18 hydrocarbons which are in a liquid form at the temperature and pressure under
19 which they are transported in pipelines in Wisconsin, and shall maintain terminal
or product delivery facilities in Wisconsin, and shall be engaged in interstate or
international commerce, subject to the approval of the public service commission

1 upon a finding by it that the proposed real estate interests sought to be acquired are
2 in the public interest.

3 **SECTION 4.** 66.1035 of the statutes is amended to read:

4 **66.1035 Rights of abutting owners.** The owners of land abutting on any
5 highway, street, or alley shall have a common right in the free and unobstructed use
6 of the full width of the highway, street, or alley. No town, village, city, county,
7 company, or corporation shall close up, use, or obstruct any part of the highway,
8 street, or alley so as to materially interfere with its usefulness as a highway or so as
9 to damage abutting property, or permit the same to be done, without just
10 compensation being made for any resulting damage. This section does not impose
11 liability for damages arising from the use, maintenance, and operation of tracks or
12 other public improvement legally laid down, built, or established in any street,
13 highway, or alley prior to April 7, 1889. All rights in property that could entitle an
14 owner to damages under this section may be condemned by any ~~corporation~~ business
15 entity that is listed in s. 32.02 in the same manner that other property may be
16 condemned by the ~~corporation~~ business entity.

17 **SECTION 5.** 700.30 of the statutes is created to read:

18 **700.30 Purchase of easement by an oil pipeline business entity. (1)**

19 **DEFINITION.** In this section:

20 (a) "Business entity" has the meaning given in s. 13.62 (5).

21 (b) "Pipeline business entity" means a business entity licensed to do business
22 in this state that transmits in pipelines in this state oil or related products, including
23 all hydrocarbons that are in a liquid form at the temperature and pressure under
24 which they are transported; maintains terminal or product delivery facilities in this
25 state; and is engaged in interstate or international commerce.

1 **(2) NOTICE OF INTENT TO ACQUIRE AN EASEMENT.** Before a pipeline business entity
2 begins negotiating with a landowner to acquire an easement, the pipeline business
3 entity shall serve upon or mail by certified mail to the landowner a notice containing
4 the following information:

5 (a) The pipeline business entity intends to acquire the easement.

6 (b) The pipeline business entity is obligated to make a good faith effort to
7 negotiate with the landowner for the purchase of the easement.

8 (c) The landowner may wish to consult an attorney.

9 **(3) REQUIREMENTS FOR CONTRACT OF SALE.** Whenever a pipeline business entity
10 purchases an easement as a result of negotiation, the contract of sale shall include
11 all of the following:

12 (a) If true, the statement: "This pipeline project may require the approval of
13 one or more governmental agencies, but no governmental agency has approved this
14 contract of sale."

15 (b) The statement: "You may wish to consult an attorney before entering into
16 this contract."

17 (c) The statement: "Section 700.30 (4) of the Wisconsin statutes provides that
18 under certain circumstances you may bring an action in circuit court within 60 days
19 after entering into this contract to have this contract declared void."

20 (d) A line for the date and the seller's signature immediately below the
21 following statement: "I have read and understand this agreement."

22 **(4) ACTION FOR VIOLATION OF REQUIREMENTS.** If the seller of an easement under
23 sub. (3) believes that the pipeline business entity violated sub. (2) or that the contract
24 of sale violates sub. (3), he or she may bring an action in circuit court within 60 days
25 after the contract is executed to have the contract declared void. If the court

1 determines that the pipeline business entity violated sub. (2) or that the contract of
2 sale violates sub. (3), the court shall declare the contract void.

3 **SECTION 6. Initial applicability.**

4 (1) The creation of section 700.30 of the statutes first applies to a contract of
5 sale for the purchase of an easement that is entered into on the effective date of this
6 subsection.

7 (2) The treatment of sections 13.48 (12) (b) 1., 32.02 (intro.) and (13), and
8 66.1035 of the statutes first applies to applications for public interest determinations
9 filed with the public service commission on June 1, 2007.

10 (END)

Parisi, Lori

From: Wilson, Danielle
Sent: Wednesday, February 20, 2008 2:37 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2861/6 Topic: Contract of sale for easement purchased by pipeline company

Please Jacket LRB 07-2861/6 for the SENATE.